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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,273	10/22/2003	Balaji S. Thenthirupera	2382	4931
28065 7590 02/25/2011				
SPRINT				
6391 SPRINT PARKWAY				
KSOPHT0101-Z2100				
OVERLAND PARK, KS 66251-2100				
EXAMINER				
JEAN, FRANTZ B				
ART UNIT		PAPER NUMBER		
2454				
MAIL DATE		DELIVERY MODE		
02/25/2011		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BALAJI THENTHIRUPERAI

Appeal 2009-007785
Application 10/691,273¹
Technology Center 2400

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and
JAY P. LUCAS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Application filed October 22, 2003. The real party in interest is Sprint Spectrum, L.P.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals from a final rejection of claims 1 to 25 and 27 under authority of 35 U.S.C. § 134(a). Claim 26 is cancelled (App. Br. 22). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm the rejections.

Appellant's invention relates to a method and system for streaming multimedia data to a mobile device which compensates for an unexpected termination of the connection. In the words of Appellant:

There are three independent claims: claims 1, 17, and 27. These claims are directed to methods and systems for streaming multimedia to mobile devices over a wireless connection, wherein a wireless connection to a mobile device is terminated, the point in the multimedia content stream where the termination occurred is retained, and after the wireless connection is re-established, the multimedia stream is resumed from approximately the point at which the wireless connection was terminated. By doing so, having to replay the multimedia content from the beginning can be avoided, saving both time and network resources. (*See, e.g.*, specification, at page 11, lines 3-10.)

(App. Br. 1).

The following illustrates the claims on appeal:

Claim 1:

1. A method for streaming multimedia content in a wireless communication system comprising:

receiving, in a server in a data network, a request from a mobile device to stream multimedia content to the mobile device from the server, the request being transmitted over a wireless connection and via a network entity to the server, wherein the network entity is selected from the group consisting of a base station controller (BSC) and a packet data serving node (PDSN);

streaming a portion of the requested multimedia content from the server to the mobile device via the network entity and the wireless connection;

the network entity detecting a termination of the wireless connection during the streaming, and the network entity responsively notifying the server;

retaining information, the information indicating a point in the multimedia content stream where the termination of the wireless connection occurred;

re-establishing the wireless connection; and

resuming streaming of the multimedia content based on the retained information.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Cohn	US 2002/0065074 A1	May 30, 2002
Grob	US 6,894,994 B1	May 17, 2005 (filed on May 20, 1999)
Zaima	US 7,071,942 B2	Jul. 04, 2006 (filed on May 22, 2001)

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1, 4, 5, 8 to 17, 24, 25, and 27 stand rejected under 35

U.S.C. § 103(a) for being obvious over Cohn in view of Grob.

R2: Claims 2, 3, 22 and 23 stand rejected under 35 U.S.C. § 103(a) for being obvious over Cohn in view of Grob and Zaima.

R3: Claims 6, 7 and 18 to 21 stand rejected under 35 U.S.C. § 103(a) for being obvious over Cohn in view of Applicant's Admitted Prior Art (AAPA).

We will review the rejections in the order argued and as grouped in the Briefs. We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue specifically turns on whether the Cohn reference teaches streaming multimedia content in a wireless communication system as claimed.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellant has invented a method for streaming multimedia content to a mobile device (Spec. 5, l. 4). A key feature of the invention is its ability to re-establish a wireless connection after an unexpected termination and resume supplying the streamed content at the point where the termination occurred (Spec. 5, l. 17).
2. The Cohn reference teaches transmission of a data stream of multimedia content to a handheld wireless device (¶¶ [0002]; [0012]). The system detects when a signal is “prematurely lost” and can resume transmission from the last successful point (¶¶ [0013]; [0082]).

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

“A court must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 401 (2007).

Appellant has raised the issue of Goluszek teaching away from the claimed invention. Our guiding court has held “The prior art’s mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claims in the ’198 application.” *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

“This court has held in a number of decisions that a United States patent speaks for all it discloses as of its filing date, even when used in combination with other references.” *In re Zenitz*, 333 F.2d 924, 926 (CCPA, 1964) (internal citations omitted).

“[O]ur cases recognize that the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (internal citations omitted).

“To be his own lexicographer, a patentee must use a ‘special definition of the term [that] is clearly stated in the patent specification or file history.’” *The Laryngeal Mask Company Ltd. v. Ambu A/S*, 618 F.3d 1367 (Fed. Cir. 2010) (internal citations omitted). “The specification does not clearly convey the patentee’s intent to appoint a special meaning to the term Having concluded that the patentee did not act as his own lexicographer in this case by clearly defining a claim term, we must determine the ordinary meaning of [the term] as used in these claims to one

of skill in the art in light of the specification and prosecution history.” *Id.* at 1372. “Although there was no dictionary or treatise definition introduced for [the term], there are . . . prior art patents also related to [the subject matter] which use the term. . . . This prior art use of the term would further inform one of skill in the art as to the common meaning of the term.” *Id.* at 1373.

ANALYSIS

*Arguments with respect to the rejection
of claims 1, 4, 5, 8 to 17, 24, 25, and 27
under 35 U.S.C. § 103(a) [R1]*

The Examiner has rejected the noted claims for being rendered obvious by Cohn in view of Grob. Appellant argues that the Cohn reference does not teach streaming multimedia content, asserting that the term “streaming” in the claim precludes a system that stores the content (App Br. 6, bottom).

We find Appellant’s arguments simply unconvincing in view of the clear disclosures of the Cohn reference and the recitations by the Examiner (Ans. 11, middle). To be clear, Cohn teaches downloading multimedia content wirelessly (§ [0002]). In paragraph 26 quoted by the Appellant (App. Br. 7, top) Cohn indicates that the content may be streamed in real time for the enjoyment of the customer, or stored. Far from “teaching away,” as asserted by Appellant, this section supports that streaming is part of the prior art. Extra features, such as storage for later play, do not denigrate the relevant teaching of streaming. (*See In re Zenitz*, cited above.) Further, Appellant’s narrow view of the meaning of “streaming” is not

supported by a special definition in the specification nor evidence of general use. (*See Phillips, and The Laryngeal Mask Company Ltd. v. Ambu A/S*, cited above.) The Examiner has presented evidence of the meaning of the term streaming, which stands unrefuted by Appellant's authorities.

Appellant argues with respect to claim 27 the same assertions concerning "streaming" discussed above (App. Br. 11, middle). We do not find the argument persuasive of error for claim 27. Appellant further argues that Cohn contains no teaching of receiving logic from a server (App. Br. 12). We endorse and adopt the response of the Examiner and decline to find error in this rejection R1 (Ans. 12, top).

*Arguments with respect to the rejection
of claims 2, 3, 22, and 23 and
claims 6, 7, and 18 to 21
under 35 U.S.C. § 103(a) [R2 and R3]*

The Examiner has rejected the noted claims for being obvious over Cohn and Grob in view of Zaima (R2) and Cohn and Grob in view of AAPA (R3) as expressed in the rejections listed above. Appellant depends on the arguments presented above for rejections R1 and R2. These arguments were found unpersuasive of error for the reasons above stated.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting claims 1 to 25 and 27 for being obvious under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's rejections R1 to R3 of claims 1 to 25 and 27.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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